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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIS ANGEL MARTINEZ,

Defendant and Appellant.

G050209

(Super. Ct. No. 13WF3134)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed as modified.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Meagan J. Beale and William M. Wood, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

This is one of two companion cases in which defendant Louis Angel Martinez pleaded guilty to different offenses. The matters were joined for sentencing and the trial court sentenced him for both cases on the same date. As with the companion case, Orange County Superior Court, case no. 13NF1843 (G050207), defendant contends the abstract of judgment reflects the incorrect number of total custody credits. The Attorney General agrees, as do we, that the abstract of judgment should be modified. “A sentence that fails to award legally mandated custody credit is unauthorized and may be corrected whenever discovered.” (*People v. Taylor* (2004) 119 Cal.App.4th 628, 647; see *People v. Acosta* (1996) 48 Cal.App.4th 411, 428, fn. 8 [“The failure to award an adequate amount of credits is a jurisdictional error which may be raised at any time”].)

In this case, defendant pleaded guilty to second degree robbery (count 1) and street terrorism (count 2). He thereafter admitted he committed count 1 for the benefit of a street gang and personally used a knife. He also admitted allegations of a prior “strike” conviction, a prior serious felony conviction, and two prior prison term convictions. The court found true the enhancements and prior conviction allegations. It sentenced defendant to two years on count 1, five years for the prior serious felony allegation, and one year for the knife use for a total of eight years. It struck the prior “strike” conviction and the prior prison term convictions for purposes of sentencing, and stayed the prison sentence on count 2 and the gang enhancement. The court awarded defendant 395 days credit (359 actual, 36 conduct). The total term imposed for this case (8 years) and the companion case (1 year) is 9 years.

As of the date originally set for sentencing, February 28, 2014, defendant had spent 359 days in custody. The trial court ordered an additional 36 days of credit for period from March 1, 2014 to the continued date set for sentencing, April 4, 2014. But defendant acknowledges the correct number of credits for that period is 35 days (31 days in March and 4 days in April) for a total of 394 actual days. To that, as the parties point

out, an extra 15 percent conduct credit of 59 days should be added. (Pen. Code, § 2933.1.)

The trial court is directed to prepare an amended abstract of judgment, indicating, as to case “A” as designated in the abstract of judgment (Orange County Superior case No. 13WF3134), 394 days of as actual credit and 59 days of conduct credit. Adding the one day of custody credit awarded in case “B” as designated in the abstract of judgment (Orange County Superior Court case No. 13NF1843), the amended abstract of judgment shall reflect a combined total of 395 days of custody credit. As amended, the abstract of judgment shall be forwarded to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.